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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,392	09/16/2003	Douglas Peery	358072.00100	2927

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EXAMINER

DEVOTI, PAUL D

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/663,392	<b>Applicant(s)</b> PEERY, DOUGLAS	
	<b>Examiner</b> Paul Devoti	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) 9 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species:

- a. Species 1- Figures 1-8
- b. Species 2- Figure 9A
- c. Species 3- Figure 9B
- d. Species 4- Figure 10A
- e. Species 5- Figure 10B

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 5-8, 10, 11, 14-17, 19, and 20 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. During a telephone conversation with Mr. Stefan Kirchanski on April 7, 2006 a provisional election was made without traverse to prosecute the invention of Species 1 (Figures 1-8). Affirmation of this election must be made by applicant in replying to this Office action. Claims 9 and 18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
3. Claims 9 and 18 do not read on the elected species, Species 1, as they refer to an auxiliary region spaced apart from the attachment region.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

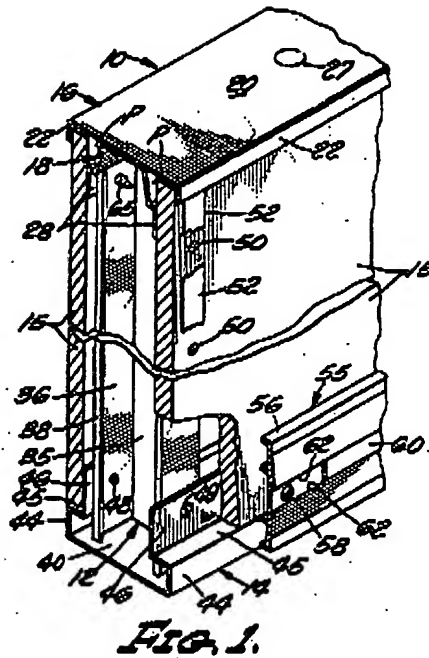
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5, 6, 7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al. (US 3397495).

Art Unit: 3637

5. Regarding claim 1, Thompson discloses a drywall partition with a floor track (14). The floor track (14) has a bottom wall (40) that is secured to a floor (F) and a support region (45) that contacts the lower edge of a wallboard (15). The floor track (14) has an elevation region (44) that connects the bottom wall (40) with the support region (45) and raises the support region (45) three or four inches above the floor (column 3, line 66-74), which is at least one quarter of one inch above the floor. There is an attachment region (46) which is connected to the support region (45) for fastening the floor track (14) to stud members (12) within a wall.
6. Regarding claim 2, a baseboard (55) covers the floor track (14).
7. Regarding claim 5, the support region (45) and bottom wall (40) are substantially parallel to each other.
8. Regarding claim 6, the elevation region (44) is substantially perpendicular to the bottom wall (40).
9. Regarding claims 7 and 8, the attachment region (46) is substantially perpendicular to the bottom wall (40) and support region (45).
10. Regarding claim 10, the elevation region (~~44~~) is substantially in contact with a baseboard (55).



Thompson et al. (US 3397495) Figure 1

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Thompson et al. (US 3397495).

13. Regarding claim 3, Thompson discloses everything previously mentioned, but does not disclose the floor track is made of metal or plastic. It would have been obvious to one having ordinary skill in the art at the time of invention to make the floor track of metal or plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 3397495) in view of Strozewski (US 3471982).

15. Regarding claim 4, Thompson discloses everything previously mentioned, but does not disclose the floor track is formed by bending a thin sheet of material. Strozewski, however, discloses a soffit adapter that is formed from bending flat material (column 2, lines 20-26). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Thompson's floor track to be formed from bending flat material, as taught by Strozewski to easily create a desired shape from a sheet of material.

16. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 3397495).

17. Regarding claim 11, Thompson discloses everything previously mentioned, including a frame of members (studs (12) and drywall (15)). The method recited in claim 11 would have been an obvious method of using the floor track of Thompson.

18. Claims 12, 14, 15, 16, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 3397495).

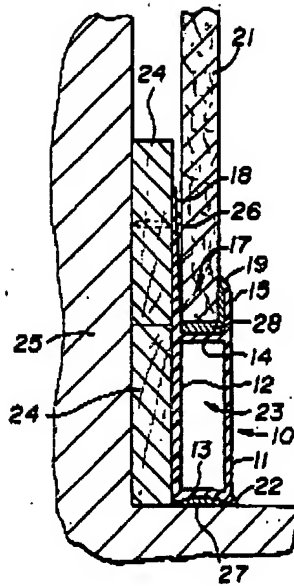
19. Regarding claims 12, 14, 15, 16, 17, and 19, Thompson discloses everything previously mentioned, which includes all of the structural limitations of these claims. The methods recited in claims 12, 14, 15, 16, 17, and 19 would have been obvious methods of using the floor track of Thompson.

20. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 3397495) in view of Cook (US 4622791).

21. Regarding claim 20, Thompson discloses everything previously mentioned, but does not disclose a layer of adhesive applied to the floor track. Cook, however, discloses a base molding (10) with a channel adapted to receive the lower edges of panels, having a layer of adhesive (28). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Thompson's floor track to include a layer of adhesive, as taught by Cook to securely hold a member in place.

22. The method recited in claim 20 would have been an obvious method of using the floor track of Thompson.





Cook (US 4622791) Figure 5

23. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 3397495) in view of Strozewski (US 3471982).

24. Regarding claim 13, Thompson in view of Strozewski discloses everything previously mentioned and the method recited in claim 1 would have been an obvious method of using the floor track of Thompson.

### **Conclusion**

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shore (US 3368312) discloses a plastic wallboard retainer for installation at a base of drywall. Lizee (US 3481090) discloses a support track for

drywall construction. Bifano et al. (US 6298609) discloses a panel support accessory for holding the bottom edge of a panel. Greenwood et al. (US 5146723) discloses an interior wall mounting device for holding wall panels in place.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PD *PD*  
04/07/06

LANNA MAI  
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